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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,224	01/22/2004	Melvin Lee Jacobson	J274.12-0001	9161
164	7590	05/31/2005	EXAMINER	
KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,224

Applicant(s)

JACOBSON, MELVIN LEE

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 18, 2005 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 23 is rejected under 35 U.S.C. 102(e) as being anticipated by Marsh et al. 2002/0112395 A1 for substantially the same reasons stated in the first Office Action. The Patent Application Publication '395 to Marsh shows an insect removal device 2 having an engagement surface (not labeled) covered with an adhesive layer 4, a backing side (not labeled) positioned opposite the engagement side, and a single release tab 6 covered with a tab liner 10 as shown in Fig. 1. Marsh show means such

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as the antiseptic or antibacterial substance for causing the pest to release from the surface.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 5, 10, 12-17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grueling in view of Byom.

The patent to Grueling shows a pest removal device for removing a pest from a surface having a main body with an engagement side 7, 8 covered with an adhesive layer 13, 14 as shown in Fig. 5. Grueling shows a backing side positioned opposite the engagement side and wherein the main body is configured to be applied to the surface to cover and smother the pest. Grueling shows a single release tab 11, 12 extending from an outer edge of the main body and covered with an adhesive layer 15, 16. Grueling does not disclose a tab liner attached to the adhesive layer. The patent to Byom shows a pest removing device having a tab liner 8, 9 attached to the adhesive layer. In reference to claims 1, 12 and 19, it would have been obvious to provide the adhesive layer of Grueling with a liner as shown by Byom for the purpose of preventing the adhesive from drying out. In reference to claims 13-14, the pest removal device of Grueling as modified by Byom does not disclose that the main body defines a diameter.

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of a circle with a half circular tab, but it would have been obvious to change the shape of the main body and tab to a circle and half circle since the function is the same and no stated problem is solved. See *In re Dailey et al.*, 149 USPQ 47. In reference to claims 10 and 15, Grueling discloses an adhesive 4 on both sides of the main body 1 as shown in Fig. 2a. In reference to claim 16, Byom discloses that the release tab 21 is covered with a tab liner 9 as shown in Fig. 1. In reference to claim 17, the combination of Grueling and Byom do not disclose that the main body and release tab are constructed from a flexible resilient foam material. However, it would have been obvious to employ resilient foam since the selection of a known material is based on its suitability for the intended use. See *In re Leshin*, 125 USPQ 416.

5. Claims 6-7, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grueling as modified by Byom as applied to claim 1 above, and further in view of Marsh et al.

The patent to Grueling and Byom show pest removing devices as discussed above. Grueling and Byom do not disclose an antiseptic penetrating the adhesive layer. In reference to claims 6-7, Marsh discloses that the adhesive layer is penetrated with an antiseptic in paragraph 16. it would have been obvious to provide the pest removal device of Grueling as modified by Byom with an antiseptic as shown by Marsh to kill bacteria on and around the pest. In reference to claim 7, it would have been obvious to provide Grueling as modified by Byom and Marsh with alcohol which is an old and well known antiseptic. In reference to claim 11, Marsh discloses removing a pest from human skin.

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6. Claims 8, 9, 18, 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grueling in view of Byom as applied to claim 1 above, and further in view of Nelson '862.

The patents to Grueling, Byom and Nelson show insect capturing devices. Grueling and Byom have been discussed above and do not show the liner spooled in a dispenser. In reference to claims 8, 18, and 20, the patent to Nelson shows an insect capturing device with storing liner 50 as shown in Fig. 16. It would have been obvious to provide the pest capturing device of Grueling as modified by Byom with a storage liner as shown by Nelson for the purpose of holding a plurality of capturing devices together during transport. In reference to claims 9 and 21, it would have been obvious to provide the insect capturing device of Grueling as modified by Byom with a storing liner spooled on a dispenser shown in Fig. 9a of Nelson to conveniently carry more than one insect catcher at a time. In reference to claim 22, Grueling shows a second layer of adhesive 4 covering the second side of the substrate 1 in Fig. 2a.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grueling in view of Byom as applied to claim 1 above, and further in view of Marsh and Nelson.

The patents to Grueling, Byom, Marsh and Nelson show insect capturing devices and have been discussed above. In reference to claim 24, it would have been obvious to provide the insect capturing device of Grueling as modified by Byom with a material (as disclosed in paragraph 0016) incorporated into the adhesive to cause the pest to release from the surface as shown by Marsh and a storing liner as shown by Nelson In Fig. 16 to store a plurality of capture devices.

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7. Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al in view of Nelson '862.

8. The patent to Marsh shows an insect removal device as discussed above.

Marsh shows providing a pest removal device (as described above in reference to claim 23), positioning the engagement side completely over the pest (as shown by Marsh in Fig. 3), securing the pest removal device to the pest, pulling the single release tab, and removing the pest removal device with the pest attached to the engagement side of the pest removal device (as shown in Fig. 4). Marsh does not disclose attaching the pest removal device to the skin or the surface. The patent to Nelson shows attaching the pest removal device to the surface and the pest as shown in Fig. 5. In reference to claim 25, it would have been obvious to provide Marsh with the step of attaching the pest removal device to the pest and the surface as shown by Nelson for a time sufficient to cause the pest to release from the surface. Since Marsh discloses an antiseptic, which will kill the pest in time, it appears that the pest would try to escape the antiseptic by releasing from the surface. In reference to claim 26, Nelson shows a storage liner 110. In reference to claim 27, both Nelson and Marsh show folding the pest removal device to trap the pest. In reference to claim 28, Nelson discloses disposing of the pest removal device in column 7, lines 32-33. In reference to claim 29, neither Marsh or Nelson disclose saving the pest attached to the pest removal device and analyzing the pest for disease, but it would have been obvious to study the pest for disease to determine if more medical treatment is required.

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9. Claims 12-14, and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsh et al.

The patent to Marsh shows a pest removal device as discussed above. Marsh shows a main body 2 having a length, a width, and an outer edge. Marsh shows an engagement side covered with an adhesive layer 4 and a backing side positioned opposite the engagement side. The main body is substantially flat and shows the structure capable of being attachable to the surface by the adhesive layer to cover and smother the pest. Marsh shows a release tab 6 extending from (beyond) an outer edge as shown in Fig. 1. Marsh shows the release tab is graspable to apply a pulling force as shown in Fig. 4 to the center and hence to the outer edge of the main body to peel the main body off the surface. Marsh shows the release tab having a length parallel to the main body length in Fig. 1. Marsh does not disclose that the tab has a length less than the main body length and a width less than the main body width, but it would have been obvious to employ a tab with a length and width less than the main body width since the size of the tab would be determined through routine experimentation. See *In re Dailey et al.*, 147 USPQ 47.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Kurt Rowan". The signature is stylized with a large, sweeping "K" and a checkmark-like flourish at the end.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR